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**TITLE 326 AIR POLLUTION CONTROL BOARD**

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**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #11-317

**DEVELOPMENT OF AMENDMENTS TO OPEN BURNING RULES CONCERNING AIR CURTAIN DESTRUCTORS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [326 IAC 1-2](#) and [326 IAC 4-1](#) concerning open burning with air curtain destructors. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [326 IAC 1-2](#); [326 IAC 4-1-6](#); [326 IAC 4-1-7](#); [326 IAC 4-1-8](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

Open burning is generally prohibited in Indiana; however, state law exempts certain open burning activities under conditions that minimize impact on air quality and public health. In addition to the specific limited instances when open burning is allowed, a person may submit an application to IDEM for an approval to engage in open burning. One type of open burning that may be considered by IDEM for an approval is the operation of an air curtain destructor.

IDEM recently received an application for an approval of a portable self-contained air curtain destructor. These newer air curtain destructors allow the operator to maintain a more consistent temperature throughout the entire combustion chamber contributing to high combustion efficiency, little particulate waste, and a large reduction in particulate matter emissions. The units are self-contained and easily transportable. However, the current approval process for the operation of an air curtain destructor under [326 IAC 4-1](#) only allows for the burning of materials placed in an adjacent pit. It does not allow for the burning of materials placed in a portable self-contained unit.

In this rulemaking, IDEM is proposing to amend the definition of "air curtain destructor" in [326 IAC 1-2-2.5](#) to include the operation of an approved portable self-contained unit. IDEM also proposes to amend the approval conditions for use of an air curtain destructor in [326 IAC 4-1-7](#) to allow for the operation of a portable self-contained unit.

A Continuation of First Notice of Comment Period for air curtain destructors was posted in the Indiana Register on October 20, 2010 (DIN: [20101020-IR-326090362FCA](#)) as part of another open burning rulemaking (LSA Document #09-362). Air curtain destructors are no longer included in the LSA Document #09-362 rulemaking, and a separate rulemaking is being started to address this issue.

**Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Amend the definition of an "air curtain destructor" at [326 IAC 1-2-2.5](#) to include an approved portable self-contained unit and [326 IAC 4-1](#) to include conditions for approval for the operation of an approved portable self-contained air curtain destructor.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Do not amend this rule.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

**Applicable Federal Law**

There is no applicable federal law.

**Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. The rulemaking proposes to include conditions for approval for the operation of an approved portable self-contained air curtain destructor. This alternative will still maintain most of the same criteria and conditions currently contained in open burning approvals. Affected entities would be able to use the open burning approval process and receive an approval to use an approved portable self-contained air curtain destructor without having to comply with the conditions in the current rule that are not appropriate for a portable self-contained air curtain destructor, such as the requirement that the air curtain strikes the opposite side

of the pit three feet below grade and to add at least one foot of dirt over the ashes in the pit each night.

Potential Fiscal Impact of Alternative 2. Affected entities would have to go through the open burning approval process that does not address a portable self-contained air curtain destructor potentially delaying their ability to proceed with projects promptly and requiring engineering modifications that may affect a unit's performance.

#### **Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

<http://www.in.gov/idem/4108.htm>

For purposes of [IC 4-22-2-28.1](#), the Small Business Regulatory Coordinator for this rule is:

Alison Beumer  
IDEM Compliance and Technical Assistance Program - OPPTA  
MC 60-04 IGCS W041  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Ryan Asberry  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 232-8962  
[smallbizombudsman@iedc.in.gov](mailto:smallbizombudsman@iedc.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01 IGCN 1307  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386  
[bbaughn@idem.in.gov](mailto:bbaughn@idem.in.gov)

#### **Public Participation and Workgroup Information**

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Susan Bem, Rule and State Implementation Plan Development Section, Office of Air Quality at (317) 233-5697 or (800) 451-6027 (in Indiana).

#### **STATUTORY AND REGULATORY REQUIREMENTS**

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

#### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Mailed comments should be addressed to:

#11-317 (APCB) Open Burning/Air Curtains  
Susan Bem Mail Code 61-50  
Rule and SIP Development Section  
Office of Air Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, Indiana 46204

Hand delivered comments will be accepted by the IDEM receptionist on duty at the tenth floor reception desk, Office of Air Quality, 100 North Senate Avenue, Indianapolis, Indiana.

Comments may be submitted by facsimile at the IDEM fax number: (317) 233-5967, Monday through Friday, between 8:15 a.m. and 4:45 p.m. Please confirm the timely receipt of faxed comments by calling the Rule and State Implementation Plan Development Section at (317) 234-6530.

**COMMENT PERIOD DEADLINE**

Comments must be postmarked, faxed, or hand delivered by July 1, 2011.

Additional information regarding this action may be obtained from Susan Bem, Rule and State Implementation Plan Development Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

Scott Deloney, Chief  
Air Programs Branch  
Office of Air Quality

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